

ISSUE DATE: November 18, 1996

DOCKET NO. G-008/CN-95-514

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Marshall Johnson
Dee Knaak
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Minnegasco, a Division of NorAm Energy
Corporation, for a Certificate of Need for a
Large Liquefied Gas Storage Facility

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PROCEDURAL HISTORY

On September 12, 1996, the Commission issued its ORDER GRANTING CERTIFICATE OF NEED in the above-captioned matter. In that Order, the Commission granted Minnegasco a certificate of need for a propane-air, peak-shaving facility the Company proposed building near Alexandria, Minnesota. The Commission found that the certificate application met the criteria for a large energy certificate of need, as found in Minn. Stat. § 216B.243 and Minn. Rules, parts 7849.0100-.0120. The Order stated in part as follows:

The Commission will not make a specific finding regarding alternative sites for the facility. The question of siting the facility will presumably continue to be developed in the Douglas County conditional use permit process now before the District Court. The Commission here finds that Minnegasco's application, which includes its proposed facility located on its proposed site, fulfills the statutory and rule criteria. [Footnote omitted.] Order at p. 10.

On October 2, 1996, the East 27 Homeowners (Homeowners) filed a petition for Commission reconsideration of a number of points in the September 12 Order.

On October 15, 1996, Minnegasco filed a reply to the petition.

On November 7, 1996, the petition for reconsideration came before the Commission for consideration. At the hearing, the Homeowners' representative stated that the Commission's Order would be read by local governing bodies deciding the issue of siting; the representative therefore asked the Commission to strike from its September 12 Order any Commission discussion of siting.

Minnegasco countered that the Order language regarding siting was merely the Commission's response to the Homeowners' assertion that Alternative Site 3 was a more reasonable and prudent site.

FINDINGS AND CONCLUSIONS

I. THE HOMEOWNERS' PETITION FOR RECONSIDERATION

The Homeowners stated that Minnegasco's compliance with the relevant safety codes, regulations, and requirements does nothing to preclude a negative impact on the neighborhood's safety. The Homeowners argued that Alternative Site 3 provides the best protection from potential harm.

In the absence of a state siting process, the Homeowners argued, the Commission should compare sites in the certificate of need proceeding. The Homeowners stated that they had produced sufficient evidence to show that Alternative Site 3 was more reasonable and prudent than the proposed site.

If siting is beyond the Commission's jurisdiction, the Commission's determination as to one site being as suitable as another should have been left out of the Order. Neither should the Commission have shown bias toward one site or another.

The Homeowners argued that a determination in favor of an alternative site would not set precedent for future cases, since the Company raised the issue of Alternative Site 3 in its application.

II. MINNEGASCO'S REPLY

Minnegasco stated that the Homeowners did not raise any new arguments in their petition for reconsideration. The Commission properly evaluated the criteria in the relevant statute and rule, together with the record evidence, and concluded that Minnegasco's application should be granted.

According to Minnegasco, the Homeowners have cited no record evidence to contradict the Commission's finding that a more reasonable and prudent alternative had not been demonstrated.

Minnegasco stated that the Commission was correct in finding that the facility, as proposed, is safe. The record evidence, and the ALJ's findings, support a finding that the probability of risk is so remote it cannot be measured.

Minnegasco argued that there is no record evidence that the facility, as proposed, is unsuitable, either because of a safety risk or because of harm to property values.

Minnegasco stated that the Commission did not err in granting the certificate of need without making a finding as to the site of the facility. Contrary to the Homeowners' assertions, the Commission did not demonstrate "bias toward one site or the other." Rather, the Commission discussed alternative sites in response to the Homeowners' argument that a more reasonable and prudent alternative exists--an argument the Homeowners failed to support. As the Commission noted, the siting of the facility will continue to be addressed in the Douglas County conditional use permit process. For the purposes of the Commission's decision, Minnegasco argued, it was sufficient that the application met that the statutory criteria and that the Homeowners did not factually demonstrate a more reasonable and prudent alternative.

III. COMMISSION ACTION

In their reconsideration petition, the Homeowners ask the Commission to reconsider its decision finding that Minnegasco's application met the statutory and rule certificate of need criteria. A review of the Company's application process and the Commission's findings demonstrates that reconsideration is not warranted.

In its application for a certificate of need, Minnegasco properly addressed the statutory and rule criteria, including the requirement that "a more reasonable and prudent alternative to the facility has not been demonstrated by a preponderance of the evidence on the record." Minn. Rules, part 7849.0120 (B). In their arguments against the application in the certificate of need proceeding, the Homeowners focused on proving that a more reasonable and prudent alternative--Alternative Site 3--*did* exist. The Homeowners introduced issues of safety and diminution of property value to support their arguments. In careful findings regarding the application as proposed, the Commission found that the Homeowners did not meet their burden of proving that a more reasonable and prudent alternative exists. The Commission found that the Homeowners did not introduce sufficient record evidence to support their allegations. The Commission concluded that the facility as proposed met the statutory and rule criteria.

The Homeowners have introduced no new fact or argument to merit reconsideration of the September 12, 1996 Order. The Homeowners' allegations of safety concerns and diminution of property value remain unsupported by record evidence. The Homeowners' arguments that the Commission should remain silent on siting, or (in contrast) that the Commission should compare alternative sites in the certificate of need proceeding--are contrary to the realities of the proceeding and the Order. Language in the Order regarding siting was addressed to the Homeowners' burden of proving its allegation that a more reasonable and prudent alternative existed. This language was central to the Commission's ultimate finding that the Company had met the statutory and rule criteria. Any less Order language regarding the issue of siting would have meant that the Commission had failed to address the Homeowners' allegations in the certificate of need analysis; any further reference to siting would have been unnecessary, given the fact that siting is currently being addressed in the Douglas County conditional use permit process.

The Commission will deny the Homeowners' request for reconsideration, and their related request to strike Order language regarding siting.

ORDER

1. The Commission denies the Homeowners' request for reconsideration of the September 12, 1996 Order granting a certificate of need.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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